

Caretaker Supplement Handbook
Appendix A – State Statutes and Administrative Code

[Go to next page](#)

Chapter 49, Wisconsin Statutes

Selected Citations

49.77 State supplemental payments. (1) Definition. In this section "secretary" means the secretary of the U.S. department of health and human services or the secretary of any other federal agency subsequently charged with the administration of federal Title XVI.

(2) Eligibility.

(a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s. 49.18, 1971 stats., s. 49.20, 1971 stats., or s. 49.61, 1971 stats., as affected by chapter 90, laws of 1973.

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section, if at least one of the following requirements are met:

a. The person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.

4. Any essential person.

(2m) Supplemental payment levels. The department may submit a proposal to change the amount of supplemental payments under this section to the secretary of administration. If the secretary of administration approves the proposal, he or she shall submit it to the joint committee on finance for approval, modification or disapproval. Joint committee on finance approval of a change in the amount of supplemental payments will be considered to be given, if within 14 calendar days after the secretary of administration files a proposal with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposal. Payment changes approved by the joint committee on finance are subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under [s. 13.10](#) do not apply to this subsection.

(3) Minimum supplemental payment in certain cases. The total monthly benefits received under this section and federal Title XVI by a person or couple described in [sub. \(2\) \(a\) 1.](#) shall not be less than the total state cash assistance payment amount plus gross earned and unearned income, received by such person or couple for December of 1973.

(3g) Federal payments. If federal supplemental security income payments increase, the department may, with approval as provided under [sub. \(2m\)](#), reduce payments under this section by all or part of the amount of the increase, subject to 42 USC 1382g.

(3s) Increased supplemental payment in certain cases. (a) The department shall authorize the payment of an increased state supplement to a person receiving payments under this section who resides in a residential setting if the person needs at least 40 hours per month of supportive home care, daily living skills training or community support services.

(b) 1. If a person receiving payments under this section is a minor child residing with a parent, only services needed when the parent is away from the residence for purposes of employment count toward the 40-hour requirement in par. (a).

2. If a person receiving payments under this section resides with a spouse, only services needed either because the spouse is away from the residence for purposes of employment or because the spouse is physically or mentally unable to provide the care count toward the 40-hour requirement in par. (a).

(c) The department shall establish a uniform assessment process for determining eligibility under this subsection.

(d) The amount payable under this subsection equals the amount of the state supplement under sub. (2) (a) paid to persons living in nonmedical group homes.

(4) Optional federal administration. (a) The department may enter into an agreement with the secretary under which the secretary will provide supplemental payments to all eligible persons on behalf of the state or any of its subdivisions. Under the agreement the department shall pay to the secretary an amount specified in accordance with agreed procedures. The department may make advance payments to the secretary if the agreement so provides.

(b) The department may enter into an agreement with the secretary under which the secretary may determine eligibility for medical assistance in the case of aged, blind or disabled individuals under the state plan approved under Title XIX of the social security act.

(c) Agreements made under this subsection or modifications to such agreements require prior approval or amendment by the joint committee on finance. Prior approval will be deemed to be given if within 21 calendar days following the department filing a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Agreements or modifications to such agreements approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under [s. 13.10](#) do not apply to this paragraph.

(5) Income determination. In determining the amount of aid to be granted a person applying for supplemental payments under this section, income shall be disregarded to the extent allowed by federal regulations.

History: 1973 c. 90, 147; 1975 c. 39, 199, 224; 1977 c. 29; 1979 c. 34; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 27; 1985 a. 29, 120, 176; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 31, 56; 1993 a. 16; 1995 a. 27 ss. 2844 to 2849 3151; Stats. 1995 s. 49.77.

Cross Reference: See also ch HFS 79, Wis. adm. code.

49.775 Payments for the support of children of supplemental security income recipients.

(1) Definitions. In this section:

- (a) "Custodial parent" has the meaning given in s. 49.141 (1) (b).
- (b) "Dependent child" has the meaning given in s. 49.141 (1) (c).

(2) Supplemental payments. Subject to sub. (3), the department shall make a monthly payment in the amount specified in sub. (4) to a custodial parent for the support of each dependent child of the custodial parent if all of the following conditions are met:

(a) The custodial parent is a recipient of supplemental security income under 42 USC 1381 to 1383c or of state supplemental payments under s. 49.77, or both.

(b) If the dependent child has 2 custodial parents, each custodial parent receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, or both.

(bm) The custodial parent assigns to the state any right of the custodial parent or of the dependent child to support from any other person. No amount of support that begins to accrue after the individual ceases to receive payments under this section may be considered assigned to the state. Any money received by the department of workforce development under an assignment to the state under this paragraph shall be paid to the custodial parent.

(c) The dependent child of the custodian parent meets the eligibility criteria under the aid to families with dependent children program under s. 49.19 (1) to (19) or would meet the eligibility criteria under s. 49.19 but for the application of s. 49.19 (20).

(d) The dependent child does not receive supplemental security income under 42 USC 1381 to 1383d.

(e) The custodial parent meets any of the following conditions:

1. The custodial parent is ineligible for aid under s. 49.19 solely because he or she receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments

under s. 49.77.

2. The custodial parent is ineligible for a Wisconsin works employment position, as defined under s. 49.141 (1) (r), solely because of the application of s. 49.145 (2) (i).

(3) Two-parent families. In the case of a dependent child who has 2 custodial parents, the department may not make more than one payment under sub. (2) per month for the support of that dependent child.

(4) Payment amount. (a) The payment under sub. (2) is \$250 per month for one dependent child and \$150 per month for each additional dependent child.

History: 1997 a.27; 1999 a.9.

Chapter HFS 79

State Supplemental Security Income Payments

HFS 79.10 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2) (a), Stats., to administer supplemental security income state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children. This chapter establishes the basis for the recovery of benefits incorrectly paid to individuals who receive benefits under s. 49.77 or 49.775, Stats., or both, provides for the department's waiver of recovery of incorrectly paid benefits and establishes the appeal right of an individual from whom the department seeks to recover benefits incorrectly paid to the individual.

History: *Cr. Register, April, 2001, No. 544, eff. 5-1-01.*

HFS 79.20 Applicability. This chapter applies to the department and to individuals receiving benefits under s. 49.77 or 49.775, Stats., or both.

History: *Cr. Register, April, 2001, No. 544, eff. 5-1-01.*

HFS 79.30 Definition. In this chapter:

(1) "Department" means the department of health and family services.

(2) "Incorrectly paid benefits" means payments of any amount dispersed to an individual who was not eligible for any benefit amount during the period for which the payment was made or in an amount which was in excess of the amount for which the person was eligible during the period for which the payment was made.

History: *Cr. Register, April, 2001, No. 544, eff. 5-1-01.*

HFS 79.40 Recovery of incorrectly paid benefits.

(1) **CURRENT RECIPIENT.** The department shall recover payments incorrectly made under s. 49.77 or 49.775, Stats., to an individual who receives benefits paid under s. 49.77 or 49.775, Stats., or both, by reducing the amount of an individual's payment under s. 49.77 or 49.775, Stats., or both, by no more than 10% until the full amount of the incorrect payment is recovered by the department, unless the individual requests a larger percentage deduction.

(2) **FORMER RECIPIENT.** (a) The department shall ask a former recipient to voluntarily repay overpayments the department made under s. 49.77 or 49.775, Stats.

(b) If a former recipient refuses to voluntarily repay the amount specified under sub. (2) and the overpayment is \$100 or more, the department may pursue collection or court action.

History: *Cr. Register, April, 2001, No. 544, eff. 5-1-01.*

HFS 79.50 Waiver of recovery. The department may waive recovery of incorrectly paid benefits for an incident of incorrect payment, be it for a single month or for an episode of incorrect payments, when the total recovery or adjustment for the single month or episode is less than \$100.

History: *Cr. Register, April, 2001, No.544 , eff. 5-1-01.*

HFS 79.60 Appeal rights. The department shall send a notice of adverse administrative action to an individual identifying the months and amounts for which benefits were incorrectly paid and the reason for which the individual was ineligible for the payment. The notice shall include information regarding the individual's right to appeal the department's decision as provided in ch. HA 3. The department delegates final decision making regarding appeals to the department of administration's division of hearings and appeals under s. HA 3.09 (9) (a).

History: *Cr. Register, April, 2001, No. 544 , eff. 5-1-01.*